

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

DANIEL G.

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER

Service Agency.

OAH Case No. 2011080468

DECISION DENYING APPEAL

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 28, 2011, in Los Angeles. The matter was submitted for decision at the end of the hearing.

Claimant, who was present, was represented by his mother.¹

Johanna Arias-Bhatia, Fair Hearing Manager, represented the South Central Los Angeles Regional Center (SCLARC or Service Agency).

ISSUE

May the Service Agency terminate funding for Claimant's independent living skills training?

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 22-year-old male consumer of the Service Agency based on his qualifying diagnosis of mild mental retardation.

2. Since 2007, the Service Agency has provided funding for Claimant to receive 38 hours per month of independent living skills (ILS) training from Buena Vida Learning Services (BVLS).

¹ Initials and family titles are used to protect the privacy of those involved.

3. By a Notice of Proposed Action dated July 8, 2011, the Service Agency notified Claimant's mother that it intended to terminate the service described above, effective in 30 days.

4. On August 10, 2011, the Service Agency received a Fair Hearing Request from Claimant's mother, which appealed the proposed termination of services.

5. During the hearing, the Service Agency conceded that it was required to continue funding the service in question while this matter was pending, pursuant to Welfare and Institutions Code section 4715, subdivision (a). For reasons not established, the Service Agency had not been providing that funding. When this was revealed during the hearing, the Service Agency's Fair Hearing Manager explored the situation and assured Claimant's mother that the funding would begin again promptly. It was not established how long the funding was not provided.

Background Information

6. In 2006, Claimant was involved in a horrific car accident, in which he was severely injured. As a result, he suffered major cognitive disabilities and has been diagnosed with mild mental retardation. He has been a Service Agency consumer since 2006.

7. Claimant currently lives with his grandmother for reasons not established. He regularly visits with his mother and step-father. He does not attend school or a vocational day program. It was not established how he occupies his time during the day.

Independent Living Skills Training

8. The funding for ILS training began in 2007. The service was provided with the intention of training Claimant to be able to move from home and live on his own. The initial goals for the ILS program were aimed at just that. However, more recent progress reports indicate that the goals have gradually transitioned to more global issues, such as Claimant learning how to do basic arithmetic, reading and writing. Other goals include accessing social activities within his community, making and keeping medical appointments, and money management. The latter goals have been consistently part of his program, and Claimant's progress in those areas has stalled.

9. Both Claimant and his mother testified during the hearing. Although they both expressed a desire for Claimant to move out on his own, neither had any specific timetable for doing so. Claimant has taken no concrete steps toward moving out.

10. The Service Agency has promulgated a purchase of service policy for ILS training. The policy is clear that ILS is intended to be funded as a time-limited transition and monitoring service. Progress reports are to be completed every six months, and it is expected that the consumer will be ready to move out within one year of the service funding. Thereafter, the service should change into a maintenance only program. If the consumer chooses not to leave the home or sustains limited progress after one year of funding the Service Agency will either terminate the funding or provide technical assistance to facilitate a move, such as helping to negotiate a lease with a landlord.

DISCUSSION

Jurisdiction and Burden of Proof

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700-4716.)² Claimant submitted a fair hearing request to appeal the Service Agency's proposed termination of funding. Jurisdiction in this case was thus established. (Factual Findings 1-5.)

The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A regional center seeking to terminate ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789.) In this case, the Service Agency bears the burden of proof regarding its proposed termination of funding, because it seeks to change funding it previously agreed to provide. (Factual Findings 1-5.)

Funding for Independent Living Skills Training

The Lanterman Act requires the parties to develop goals, as well as the services and supports necessary to achieve those goals, in the process of creating an individual program plan (IPP). A client's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs," (§ 4646.5, subd. (b).) Section 4512, subdivision (b), provides that the determination of which services and supports are necessary to address a consumer's needs shall include the effectiveness of each option in meeting the goals stated, and the cost-effectiveness of each option.

Section 4646.4 was recently added to the Lanterman Act as a cost-containment measure in response to the current state budget crisis. Section 4646.4, subdivision (a), requires regional centers to conform to their purchase of service guidelines when making the above-described determinations. However, a service policy established by a regional center to generally govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

In this case, the funding for Claimant's ILS training has exceeded the intended time period by three years. Claimant's progress in many areas of the program has stalled and he has no concrete plans to move out on his own. The ILS training was not intended to be indefinite. According to the Lanterman Act, the Service Agency is required to provide services in a cost-effective manner and where progress is being made toward intended goals. That is no longer happening with Claimant's ILS training. In addition, continuing the funding under these circumstances would be contrary to the Service Agency's ILS funding

² All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

policy. Recent changes to the Lanterman Act require regional centers to abide by their funding policies. It was not established that following the Service Agency's ILS policy would be contrary to the dictates of the Lanterman Act in this particular case, where Claimant's progress toward his goals has stalled and it is not apparent that he intends to move out on his own any time soon.

However, since the Service Agency was required to provide aid-paid-pending funding for this service, but did not, an order is warranted requiring it to continue the funding for a period equal to the time the funding was not provided. Although the exact period was not established, it was not less than two months, which is the period between when the Service Agency scheduled the effective date of the funding termination and the date of the hearing when it was discovered that the funding had terminated prematurely.

LEGAL CONCLUSION

Cause was established pursuant to sections 4512, 4646.5 and 4646.5 to terminate funding for Claimant's independent living skills training. (Factual Findings 1-10 and Discussion.)

ORDER

Claimant's appeal is denied. However, funding for the independent living skills training shall continue for two more months from the date of this order. Thereafter, the South Central Los Angeles Regional Center may terminate funding for Claimant's independent living skills training.

DATED: October 31, 2011

ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.